

videotapes that the parties are presently discussing.

On September 7, 2001, Defendants delivered the CFR and TMF/LMD databases to PLC withholding some privileged information. On September 20, 2001, PLC requested DLC provide PLC with a comprehensive listing of all information reserved and/or redacted from the databases as well as the reason for Janssen's determination that certain records should not be disclosed at the present time. Further, PLC advised that it desired to obtain one comprehensive and complete production of each database and requested a new CD containing the complete database. DLC is gathering this information and will provide PLC with a privilege log identifying the documents withheld and/or redacted and the basis for such action.

The parties are continuing discussions regarding a nominee for Special Master as required by Section H(3) of PTO 10.

III. State Liaison Counsel - (Minute Entry, November 16, 2000)

PLC has had a number of telephone conferences and meetings with attorneys involved in state court litigation primarily to discuss the pending Injunction Motion. Several meetings have taken place to coordinate brief writing, preparation for oral argument and responses to the motion.

IV. Patient Profile Form and Authorization

As of Monday, October 22, 2001, Defendants have received 1161 Patient Profile Forms (PPFs). None is currently overdue (other than those that are the subject of pending motions), and 287 PPFs will become due within thirty (30) days. PLC and DLC continue to communicate directly with plaintiff counsel whose PPFs are overdue.

At the last status conference, DLC informed the Court of the intent to file several Motions to

Dismiss with Prejudice the claims of individuals who have violated Pre-Trial Order No. 9 for failure to furnish a PPF. At the October 25, 2001 Monthly Status Conference, DLC will present for dismissal these Motions seeking to dismiss the claims of plaintiffs, Patty Absheir, Hugh Ford, Irvin Leitz and Gladys Rodriguez. In addition, DLC has moved and will present for dismissal with prejudice the names of the plaintiffs identified on the attached list, Exhibit A, identified as the Bart/Gallagher plaintiffs. As noted on this list, plaintiffs' counsel has filed Motions to Withdraw as Counsel for the various plaintiffs in the *Alix*, *Ansardi*, *Banks*, *Batiste*, *Boudreaux*, *Chesteen*, *Dufrene* and *Harris* matters. Defendants are preparing Memoranda in Opposition to these Motions to Withdraw and will be prepared to argue these matters at the October 25, 2001 status conference. DLC will not seek the dismissal of Jason Link, as stated in Joint Report No. 10, because Mr. Link has since furnished Defendants his PPF. (The PPF and the Motion To Dismiss essentially crossed in the mail.) Responses in opposition to the Motion to Dismiss have been filed on behalf of 7 plaintiffs (Chapman, Vernon, Gill, McGowan, Starkey, Duet and Fredrick) claiming their PPF's were furnished to plaintiff counsel in June of 2001 "when Plaintiff's counsel was displaced from their offices because of Tropical Storm Allison." These plaintiffs maintain that they will complete and deliver the PPF's to DLC on October 23, 2001. DLC requests that the court defer consideration of the Motion to Dismiss with respect to these seven plaintiffs pending receipt of the completed PPF's and reserving all of the defendants rights with respect to pursuing these Motions and investigating the circumstances advanced to excuse the timely preparation of these PPF's.

Recently, DLC has learned that approximately 20% of plaintiffs have furnished limited (instead of blanket) medical authorizations to defendants addressed to specific healthcare providers. PLC and DLC have discussed this issue and are continuing discussions regarding the authorizations that have

been furnished and which are to be furnished by claimants. In addition, DLC has received almost 100 PPFs with no medical and/or employment authorizations attached. DLC is preparing Motions to Enforce Pre-Trial Order No. 9 regarding the limited authorizations and Motions to Compel and Secondarily to Dismiss with Prejudice as to the plaintiffs who have failed to furnish any authorizations whatsoever. PLC has requested that DLC furnish a listing of any issues it may have with PPF's so that PLC can assist in resolving any issue prior to the filing of any motions, and the defendants have agreed to this request. The parties will be prepared to discuss this in more detail at the October 25, 2001 Monthly Status Conference.

V. Subpoena to FDA

The FDA provided to Defendants on September 19, 2001 the balance of all documents responsive to the subpoena. On October 22, 2001 PLC received from defendants documents defendants had reviewed from the FDA through bates number FDA-15656. According to the September 19, 2001 production the FDA produced documents with bates numbers through FDA-22945. PLC has advised DLC that it desires production of the documents in a timely manner consistent with the agreement reached between PLC and DLC. PLC is waiting receipt of the remainder of the FDA documents from DLC. Defendants have advised they will complete production of such documents to PLC by November 2, 2001. The parties will be prepared to discuss this in more detail at the October 25, 2001 monthly status conference.

Additionally, on October 22, 2001 (by letter dated October 19, 2001) PLC wrote counsel for the FDA requesting certification from the FDA that a complete production of FDA documents bates numbered FDA-00001 through FDA-09394 has occurred. Apparently there were some bates

numbering problems encountered with the FDA production and/or missing or omitted documents. PLC is awaiting a response from the FDA.

VI. Service List of Attorneys

The parties will present the Court with the most current Master List of all Counsel, which will contain, where available, e-mail addresses.

VII. Ongoing Studies/Subpoena to BevGlen

Defendants have drafted a recommended order providing for scientific studies that are ongoing. On Monday October 22, 2001, defendants faxed a draft of the proposed order to plaintiffs' counsel, Arnold Levin, who has been designated by PLC to work with the defendants on this particular draft order. The parties believe they will have a finalized Order for this Court's approval by the next status conference.

On October 10, 2001, PLC filed a Motion to Compel against BevGlen for its failure to respond to PLC's subpoena duces tecum. Since that time, BevGlen has agreed to permit Defendants to assist in the collection of the documents responsive to the subpoena. DLC will have the collection completed and with delivery of the responsive documents, appropriate log(s) and certification by November 11, 2001. PLC has agreed to this arrangement and will continue the hearing on the Motion to Compel until the November monthly status conference, pending receipt of the documents.

On August 20, 2001 PLC served a subpoena upon Dr. Joseph Levy. Counsel for Dr. Levy has contacted PLC and advised that the documents will be produced within the next week. PLC will report on the status of Dr. Levy's production at the November monthly status conference.

VIII. Third Party Subpoena Duces Tecum Issued by PSC

Defendants have sent requests for certifications to third party entities for their execution. A letter from DLC to PLC listing all of these entities will be delivered on October 24, 2001. Defendants will follow up with these companies this week. As soon as Defendants receive the executed certifications, Defendants will forward them to PLC.

PLC will advise the court as to the status of third party subpoena duces tecums as issues arise in the course of discovering information.

IX. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification.

The parties have circulated drafts of a proposed Order to govern the filing of a Motion for Class Certification. The parties hope to finalize the proposed Order prior to the October 25, 2001 conference and will present it to the Court at such time.

X. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On May 22, 2001, Defendants served a Request for Production of Documents Propounded to Plaintiffs - Set No. One: Ongoing Studies. The majority of plaintiffs have furnished Defendants with their responses; however, there remain approximately 24 plaintiffs' responses that remain outstanding. Defendants are preparing a Motion to Compel against these parties and will file such Motion fifteen (15) days before the November 15, 2001 status conference and will set the Motion for hearing at that time.

On June 5, 2001, Defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. Two. Defendants are awaiting a response.

XI. Modification of Pre-Trial Order No. 9

This is complete and may be removed from the Agenda.

XII. Briefing on Injunction

Defendants have advised they intend to supplement the Urquhart affidavit by October 26, 2001. DLC has furnished a draft copy to PLC for review.

PLC intends to advise the court as to the identity of the counsel who will be presenting oral argument in opposition to the Injunction Motion. Further, PLC intends to advise the court of the various state court parties that will be opposing the motion. PLC is in the process of gathering CV's from the attorneys who will be making argument and PLC will furnish C.V.'s to the Court and DLC for those attorneys who plan to argue in opposition.

Since the Opposition and Reply Briefs are due on successive Fridays, PLC and DLC will make sure that arrangements are made for the delivery of appropriate service copies on each Friday.

XIII. Agenda

A proposed Agenda for the October 25, 2001 Status Conference is attached.

Respectfully submitted,

RUSS M. HERMAN, T.A. (La. Bar #6819)
LEONARD A. DAVIS, #14190
JAMES C. KLICK, #7451
HERMAN, MATHIS, CASEY, KITCHENS & GEREL, LLP
820 O'Keefe Avenue
New Orleans, Louisiana 70113
Phone: (504) 581-4892
Fax: (504) 561-6024
LIAISON COUNSEL FOR PLAINTIFFS

DANIEL E. BECNEL, JR.
106 W. Seventh Street
Reserve, LA 70084-0508
Phone: (504) 536-1186
Fax: (504) 536-6445

ARNOLD LEVIN
510 Walnut Street, Suite 500
Philadelphia, PA 19106-3875
Phone: (215) 592-1500
Fax: (215) 592-4663

WENDELL H. GAUTHIER
3600 North Hullen Street
Metairie, LA 70002
Phone: (504) 456-8600
Fax: (504) 456-8624

STEPHEN B. MURRAY
909 Poydras Street, Suite 2550
New Orleans, LA 70112
Phone: (504) 525-8100
Fax: (504) 584-5249

J. MICHAEL PAPANTONIO
316 S. Baylen Street, Suite 600
P.O. Box 12308
Pensacola, FL 32581
Phone: (850) 435-7000
Fax: (850) 435-7020

CHRISTOPHER A. SEEGER
One William Street
New York, NY 10004
Phone: (212) 584-0700
Fax: (212) 584-0799

BOB F. WRIGHT
556 Jefferson Street, Suite 500
Lafayette, LA 70502-3668
Phone: (337) 233-3033
Fax: (337) 232-8213

CHARLES S. ZIMMERMAN
901 North Third Street, Suite 100
Minneapolis, MN 55401-1016
Phone: (612) 341-0400
Fax: (612) 341-0844

PLAINTIFFS' STEERING COMMITTEE

JAMES B. IRWIN, T.A. (La. Bar No. 7172)
QUENTIN F. URQUHART, JR. (La. Bar No. 14475)
KIM E. MOORE (La. Bar No. 18653)
IRWIN FRITCHIE URQUHART & MOORE, LLC
400 Poydras Street, Suite 2700
New Orleans, Louisiana 70130
Phone: (504) 310-2100
Fax: (504) 310-2101

**LIAISON COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND JOHNSON & JOHNSON**

DRINKER, BIDDLE & SHANLEY LLP
THOMAS F. CAMPION
SUSAN M. SHARKO
500 Campus Drive
Florham Park, NJ 07932-1047
Phone: (973) 549-7300
Fax: (973) 360-9831

-and-

PREUSS, SHANAGHER, ZVOLEFF & ZIMMER
CHARLES F. PREUSS
DONALD F. ZIMMER, JR.
225 Bush Street, 15th Floor
San Francisco, CA 94104-4207
Phone: (415) 397-1730
Fax: (415) 397-1735
**CO-LEAD COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Joint Report No. 11 of Plaintiffs' and Defendants' Liaison Counsel has been served on Plaintiffs' Liaison Counsel, Russ M. Herman, by U. S. Mail and e-mail or by hand delivery and e-mail and upon all parties electronically by uploading the same to Verilaw in accordance with Pre-Trial Order No. 4, on this 23rd day of October, 2001.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: PROPULSID : **MDL NO. 1355**
PRODUCTS LIABILITY LITIGATION :
 : **SECTION: L**
 :
 : **JUDGE FALLON**
THIS DOCUMENT RELATES TO ALL CASES : **MAG. JUDGE AFRICK**
 :
 :
.....

Monthly Status Conference October 25, 2001 9:00 a.m.

AGENDA

Current Matters:

1. Master Complaint/Answer
2. Update of Rolling Document Production and Electronic Document Production
3. State Liaison Counsel
4. Patient Profile Form and Authorization
5. Subpoena to FDA
6. Service List of Attorneys
7. Ongoing Studies/Subpoena to BevGlen
8. Third Party Subpoena Duces Tecum Issued by PSC
9. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification
10. Plaintiffs' and Defendants' Respective Requests for Production of Documents
11. Modification of Pre-Trial Order No. 9
12. Injunction Briefing